

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

COUPONCABIN LLC., a Delaware
Limited Liability Company,

Plaintiff,

VS.

SURFMYADS.COM, INC.,
a California Corporation.

Defendant.

No. 1:18-CV-7523

Honorable Judge: Rebecca R. Pallmeyer
Magistrate Judge: Jeffrey T. Gilbert

AMENDED COMPLAINT

Plaintiff, CouponCabin LLC., (hereinafter “CouponCabin”), by its attorneys, McKnight & Kitzinger, LLC, complains against the Defendant, SurfMyAds.com, Inc., (hereinafter “Surf”) as follows:

JURISDICTION AND VENUE

1. This action is based upon a federal question subject to 28 U.S.C. §1331 and 1338 as this action alleges violation of a federal statute under the CFAA (18 U.S.C. §1030 *et seq.*) and the DMCA (17 U.S.C. §1201 *et seq.*). The court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367.

2. Venue is proper under 28 U.S.C. §§ 1391 as the claims alleged in this action arose in this judicial district, a substantial part of the transactions and events occurred in this judicial district, and the Defendant has substantial contacts with this district.

PARTIES

3. The Plaintiff, CouponCabin is a Delaware Limited Liability Company with its principal place of business located at 21 West Illinois Street, Chicago, Illinois. CouponCabin owns and operates a website which focuses on providing coupon content for its users over the internet.

4. The Defendant, Surf, is a California corporation with its principal place of business located at 321 Santa Monica Blvd., Santa Monica, California. Surf is also in the business of owning and operating a website providing coupon content for its users over the internet. Surf owns and operates the website promocodes.com among other such websites.

FACTS COMMON TO ALL COUNTS

5. CouponCabin is a leading provider of online, printable and grocery coupons for more than 3,000 retailers and merchants, and provides more than 20,000 active and genuine coupons, coupon codes, discount offers and/or links for said information. (“Coupon Content”).

6. CouponCabin provides the above material and informational services through its website, www.couponcabin.com. (“The Site”).

7. CouponCabin has spent significant time, money, resources and effort developing its Site content, Coupon Content, trademarks and copyrighted material in the Site. In order to make the Site successful and beneficial to CouponCabin’s users, CouponCabin has spent considerable time, money and resources developing and maintaining relationships with online merchants and retailers.

8. CouponCabin receives a commission from these merchants and retailers in return for directing internet traffic and potential customers to their websites. CouponCabin’s business

goodwill among its users and its relationships to the aforesaid merchants and retailers has taken years to build and perfect.

9. CouponCabin takes steps to protect and safeguard its Coupon Content through various technological safety measures and strict Terms and Conditions on its Site.

10. Users of the Site agree to abide by the Terms and Conditions whenever they access the Site or use the Site's services.

11. CouponCabin employs specialists in the computer and internet industry and specialized software and systems to monitor activity on its Site and prevent unauthorized access and misappropriation of its Coupon Content and proprietary information.

12. That many coupon codes constituting part of its Coupon Content are specialized to CouponCabin and not obtainable by any other competitor in the industry. The merchants assign unique and specialized codes to CouponCabin alone for its exclusive use.

13. That on or about September 2018, CouponCabin's security measures discovered that promocodes.com, a website owned and operated by Defendant Surf was accessing CouponCabin's Site and copying, harvesting and scraping CouponCabin's copyrighted and proprietary information and Coupon Content without authorization in violation of CouponCabin's Terms and Conditions as well as state and federal law.

14. It was discovered that promocodes.com was using agents and potentially electronic means (such as spiders or bots), to access and make clicks and requests on the Site to obtain specific Coupon Content, which generated click and request activity on specific Coupon Content without conducting any transactions.

15. This activity generated unnatural usage of the Site as compared to regular customers, who conduct transactions on far less activity related to accessing Coupon Content.

16. These actions by Defendant significantly affect the functioning and actual display of Coupon Content on the Site in that it communicates false signals to the Site's automated content management system ("CMS"), which, among other things, drives less desirable coupon codes higher up the page and more desirable codes farther down the page than would otherwise be displayed.

17. These actions further impair the ability of normal users of the Site to view and obtain codes and offers via CouponCabin's CMS software which tracks the desirability of Coupon Content and displays content based upon user activity.

18. Thus, the unauthorized user actions disrupt the display and activity on the Site which damages CouponCabin's marketability of its Coupon Content, including its exclusive coupon codes.

19. Upon discovery of this unnatural activity on its Site, CouponCabin began a costly and intensive investigation of each and every Internet Protocol address ("IP address"), and account associated with Defendant's actions.

20. CouponCabin was required to secure additional security and information technology ("IT") personnel to investigate and verify the unnatural activity, trace the unauthorized user activity and take steps to block and prevent further incursions to its Site by said unauthorized users associated with Defendant. In addition, CouponCabin employees were required to expend significant additional time, including beyond business hours, to investigate, trace, and implement blocks to prevent further incursions to and illegal activity on its Site by said unauthorized users associated with Defendant.

21. Technological protections designed to safeguard the Coupon Content on the Site, including aspects that third-party specialists and vendors have been engaged to provide, are technical and extensive.

22. That Surf through its agents, employees or associates have bypassed CouponCabin's security systems, including IP address blocks, to illegally gain the access and use of its Coupon Content on the site to the detriment of CouponCabin.

23. That in addition to spending time and money tracking and blocking these illegal actions, CouponCabin was forced to expend resources separating false users from real users.

24. That Surf's actions further impaired and falsely skewed the numbers used by CouponCabin's data and financial analysts in determining what Coupon Content, Site design, display and other aspects of its business was successful against what was not successful.

25. That said incorrect information impairs CouponCabin's business decisions, including, but not limited to, which merchants to approach for its exclusive codes.

26. The aforementioned process has to be implemented by CouponCabin every time unnatural activity is discovered, and it was required to be implemented and maintained due to the ongoing actions of Surf and its agents.

27. That CouponCabin's investigation further revealed that not only were the unauthorized actions against its Site a disruption and impairment to its natural operation, that its exclusive coupon codes otherwise unavailable to Surf were being displayed on the promocodes.com website.

28. It became clear that a competitor was not only affecting the normal functioning and operation of CouponCabin's Site, but that Surf's actions were aimed at stealing

CouponCabin's Coupon Content and exclusive coupon codes for its own financial benefit to the financial detriment of CouponCabin.

29. That the actions of Surf are an intentional violation of the Terms and Conditions of the Site.

30. CouponCabin's attorneys addressed Surf's unauthorized actions against the Site, and its unauthorized misappropriation of CouponCabin's proprietary information and Coupon Content, by sending Cease & Desist letters to Surf and its agents or affiliates and employees on September 5, 2018, October 10, 2018 and October 16, 2018. (See Group Exhibit A).

31. That as detailed in the aforementioned Cease & Desist correspondence, Surf, including through its website promocodes.com, violated the Site's Terms and Conditions and gained access and use to the Site's proprietary information and Coupon Content illegally for the benefit of promocodes.com and Surf.

32. That despite the aforementioned warnings and revocations of authorization to use the Site, Surf, though promocodes.com, continued to illegally access and use CouponCabin's proprietary information and Coupon Content.

33. The significant and extensive hours of investigation, remedial efforts, legal action, and business disruption related to said activities on each and every violation was far in excess of \$5,000.00.

34. All users must abide by the Terms and Conditions of the Site, which among other things expressly prohibits unauthorized access and misappropriation of the Coupon Content. (See Exhibit B).

35. That the Terms and Conditions of the Site are conspicuous and easily identifiable by all users of the Site, and notice is amply provided on every page of the Site to notify users of the aforementioned restrictions on use.

36. That Surf, as a competitor in the same business as CouponCabin with its own website containing terms of use, was aware and on notice at all times that the Site was governed by the Terms and Conditions;

37. That Surf, its agents, affiliates and employees continued to violate the Terms and Conditions of the Site even after receiving written correspondence from CouponCabin informing them of such violations, multiple times, which included detailed and direct reference to the terms violated. (Group Exhibit A).

38. The Terms and Conditions specifically prohibit the “use of manual or automated software, robots, scripts, devices or any other extraction tools or means of systematic retrieval to access, spider, scrape, harvest, crawl or otherwise act on (i) any pages of the Services, (ii) any data, materials or content contained in or found on the Services or (iii) any server owned or controlled by CouponCabin and manually accessing the Services (or any server owned or controlled by CouponCabin or its agents) and copying, saving, downloading or recording in a manner inconsistent with the personal license granted herein any data, materials or content contained in or found on the Services.” (Exhibit B).

39. That the actions of Surf through its agents, employees or associates, by misappropriating Coupon Content from the Site and using the Site in violation of the Terms and Conditions, and by using methods to circumvent CouponCabin’s technological protections, have not only impaired the normal functioning of the Site, but have allowed the distribution and use of the Site’s Coupon Content without the authorization of CouponCabin.

40. That CouponCabin's proprietary information and Coupon Content has taken years of development and effort and is thus, unique and distinct, and CouponCabin has a clear and ascertainable right to the protection of its proprietary information and Coupon Content.

41. That Surf's actions and continued unauthorized access are causing real and immediate irreparable harm to CouponCabin which there is no remedy at law.

42. That given the nature of Surf's violations, CouponCabin is likely to succeed on the merits of its claims.

43. That the balance of equities favors CouponCabin's equitable rights over the Defendant.

COUNT I
VIOLATION OF COMPUTER FRAUD AND ABUST ACT
18.U.S.C.§1030 ET SEQ

44. Plaintiff adopts and re-alleges paragraphs 1-43 as though fully set forth herein.

45. CouponCabin's computers and servers are involved in interstate and foreign commerce and communication and are protected under 18 U.S.C. §1030(e)(2).

46. That Defendant knowingly accessed Plaintiff's computers and servers without authorization or in excess of the authorization permitted and in circumvention of the technical barriers Plaintiff employed to protect its proprietary information and Coupon Content.

47. That after gaining unauthorized access to Plaintiff's computers and servers, the Defendant obtained and used valuable information from Plaintiff's protected computers and servers in transactions involving interstate or foreign communications in violation of 18 U.S.C. §1030(a)(2) and distributed Plaintiff's proprietary information and Coupon Content to third-parties.

48. That the Defendant's willful intent to gain unauthorized use and access to Plaintiff's computers and servers was for the purpose of obtaining something of value in violation of 18.U.S.C. §1030(a)(4).

49. That Defendant's access and authorization to the Site was restricted and revoked multiple times.

50. Plaintiff has sustained damage and loss by Defendant's violations including, but not limited to, harm to Plaintiff's computer systems and their normal operation, impairment to the integrity and availability of information and data displayed on the Site, expenses associated with the investigation, remedial action, legal action and increased protection to Plaintiff's computer systems, lost business opportunities and clientele, damage to Plaintiff's normal business operations, and damage to Plaintiff's goodwill and relationships.

COUNT II
TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

51. Plaintiff adopts and re-alleges paragraphs 1-43 as though fully set forth herein.

52. Plaintiff has a reasonable expectation of economic benefit from its Site, proprietary information and Coupon Content.

53. That Defendant is fully aware of Plaintiff's business relationships and continued economic expectations as they are a competitor in the industry and had registered accounts on Plaintiff's Site.

54. That Defendant used its unauthorized knowledge and misappropriated proprietary information of Plaintiff to its financial advantage and the financial detriment of Plaintiff.

55. That Defendant intentionally interfered with Plaintiff's expected economic benefits with full knowledge its actions would damage Plaintiff's business.

56. That by intentionally impairing the normal functioning of the Site and the integrity of displayed Coupon Content Defendant increased the chances of user traffic to its websites and away from Plaintiff.

57. That Defendant's targeting of the functioning of Plaintiff's Site was for the purpose of stealing expected users and clientele of Plaintiff.

58. That Defendant's unauthorized and illegal theft of CouponCabin's exclusive coupon codes and Coupon Content was for the purpose of driving users to its websites and away from Plaintiff.

59. That Defendant's actions did in fact draw users to its websites and away from Plaintiff causing financial loss to Plaintiff it would have otherwise had if not for Defendant's actions.

60. That had Defendant not interfered with Plaintiff's expected economic advantages Plaintiff would still have said expectations and relationships.

61. As a direct and proximate result of Defendants' actions, Plaintiff sustained monetary damages, loss of expected business and goodwill.

COUNT III BREACH OF CONTRACT

62. Plaintiff adopts and re-alleges paragraphs 1-43 as though fully set forth herein.

63. Use of Plaintiff's website and use of Plaintiff's services are governed by and subject to the CouponCabin Terms and Conditions. (See Exhibit B)

64. Said Terms and Conditions are at the bottom of every page of the Site and by accessing and using the Site of any content, users agree to the Terms and Conditions for authorized access.

65. That said Terms and Conditions are conspicuous and users are on notice of use restrictions throughout the Site.

66. That Surf as the owner and operator of a competing website with its own terms of use was on notice of and aware at all time of said Terms and Conditions.

67. That despite multiple warnings and revocations of access to the Site, Defendant and its agents continued to violate CouponCabin's Terms and Conditions after it was in receipt of said warnings and revocations.

68. That users are not permitted to access and use the Site's services without agreeing to the Terms and Conditions.

69. That the Terms and Conditions are a legally binding and enforceable contract with the Site's users.

70. That Defendant's actions are a breach of the Terms and Conditions.

71. That Plaintiff has sustained damages as a result of Defendant's breach.

PRAYER FOR RELIEF

WHEREFORE, CouponCabin respectfully prays that judgment be entered against Surf in one or more of the following:

1. Preliminary and Permanent Injunctive relief enjoining and restraining the Defendant, its employees, representatives, agents, affiliates and all persons or entities, foreign or domestic, from accessing and using the Site for any commercial purpose whatsoever, along with penalties for failure to comply, to release and return all proprietary information and Coupon Content and/or destroy any such information and material, and to immediately Cease & Desist the access and use of CouponCabin's proprietary information to any third-parties, and any other relief this court deems just and necessary;

2. Award CouponCabin restitution and damages including but not limited to, compensatory damages in excess of \$100,000, statutory damages, punitive damages and reasonable attorney fees as permitted by law;

3. Any further relief permitted by law and proved by the evidence this court deems just and necessary.

4. Plaintiff demands trial by jury.

Respectfully submitted,

/s/Bryan T. Butcher

Bryan T. Butcher

One of the Attorneys for Plaintiff

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